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October 21, 2003

TO: Examiner Horlick (TC1600)

GROUP: 1637

FAX NUMBER: 703-872-9306

ATTORNEY DOCKET NO.: DEX-0241

SERIAL NO.: 10/002,344

FILED: October 25, 2001

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MESSAGE: Attached please find Amendment Transmittal Letter, Reply to Restriction Requirement and Certificate of Transmission by Facsimile.

Kathleen A. Tyrrell, Registration No. 38,350

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CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8) Applicant(s): Recipon et al.			Docket No. DEX-0241
Serial No. 10/002,344	Filing Date October 25, 2001	Examiner Horlick, Kenneth R.	Group Art Unit 1637
Invention: Compositions and Methods Relating to Lung Specific Genes and Proteins			

I hereby certify that this Reply to Restriction Requirement
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AMENDMENT TRANSMITTAL LETTER (Large Entity)	Docket No.
Applicant(s): Recipon et al.	DEX-0241

Serial No.	Filing Date	Examiner	Group Art Unit
10/002,344	October 25, 2001	Horlick, Kenneth R.	1637

Invention: **Compositions and Methods Relating to Lung Specific Genes and Proteins**

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is an amendment in the above-identified application.

The fee has been calculated and is transmitted as shown below.

CLAIMS AS AMENDED

	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST # PREV. PAID FOR		NUMBER EXTRA CLAIMS PRESENT		RATE	ADDITIONAL FEE
TOTAL CLAIMS	19	-	20	=	0	x	$18.00	$0.00
INDEP. CLAIMS	2	-	3	=	0	x	$86.00	$0.00
Multiple Dependent Claims (check if applicable) ☐								$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT								$0.00

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.:	DEX-0241
Inventors:	Recipon et al.
Serial No.:	10/002,344
Filing Date:	October 25, 2001
Examiner:	Horlick, Kenneth R.
Group Art Unit:	1637
Title:	Compositions and Methods Relating to Lung Specific Genes and Proteins

Certificate of Facsimile Transmission

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On October 21, 2003

Kathleen A. Tyrrell, Registration No. 38,350

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Dear Sir:

Reply to Restriction Requirement

This is a reply to the Restriction Requirement mailed September 22, 2002 setting a one (1) month statutory period for response. Please enter the following remarks into the record.

Remarks begin on page 2.

REMARKS

Claims 1-17 are pending in the instant application. Claims 1-17 have been subjected to a Restriction Requirement as follows:

Group I, claims 1-5, 7-9 and 15 (partial), drawn to nucleic acids, vectors, host cells and methods of making a polypeptide, classified in class 536, subclass 23.1, and class 435, subclasses 69.1, 320.1 and 325, for example;

Group II, claim 10-11, drawn to polypeptides, classified in class 530, subclass 350, for example;

Group III, claims 12 and 15 (partial), drawn to an antibody, classified in class 530, subclass 387.1, for example;

Group IV, claims 6 and 14 (partial), drawn to a method for determining the presence of a nucleic acid, classified in class 435, subclass 6;

Group V, claims 13 and 14 (partial), drawn to a method for determining the presence of a polypeptide, classified in class 435, subclass 7.1, for example;

Group VI, claim 16, drawn to a method for treating a patient with lung cancer by administering an antibody, classified in class 514, subclass 2, for example;

Group VII, claim 17(partial), drawn to a vaccine comprising

a polypeptide, classified in class 514, subclass 2; and

Group VIII, claim 17 (partial), drawn to a vaccine comprising a nucleic acid, classified in class 514, subclass 44.

The Examiner suggests that these Groups are distinct.

Specifically, with respect to Groups I, II, III, VII and VIII, the Examiner suggests that the claims are drawn to different products having different structures and functions.

With respect to Groups I and IV, and Groups III and (V,VI), the Examiner has acknowledged their relationship as product and process of use. However, the Examiner suggests that the Groups are distinct because the products can be used in materially different methods or processes.

With respect to Groups I and (V, VI), Groups II and (IV, V and VI), Groups III and IV, Groups IV-VI, and Groups (IV-VI) and (VII,VIII), the Examiner suggests that the Groups are unrelated because the different Groups are not required for one another.

Further, the Examiner suggests that each of Groups I-VIII are drawn to a multitude of nucleic acids, polypeptides, and antibodies thereto which are independent and distinct. Thus, the Examiner is also requiring election of a single nucleic acid, polypeptide or antibody.

Applicants respectfully traverse this Restriction

Requirement.

MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the restriction is not required. A search of prior art relating to an elected nucleic acid, polypeptide or antibody would also reveal any references teaching uses for the nucleic acid, polypeptide or antibody. Accordingly, Applicants believe that searching of all the claims, at least when limited to elected nucleic acids or polypeptides is overlapping and would not place an undue burden on the Examiner if the Restriction is not made.

Thus, since this Restriction Requirement does not meet both criteria as set forth in MPEP § 803 to be proper, reconsideration and withdrawal of this Restriction Requirement is respectfully requested.

In addition, with respect to the election of a single sequence, MPEP § 803.04 clearly states that a reasonable number of nucleotide sequences, normally ten sequences, can be claimed in a single application. Accordingly, withdrawal of this sequence election requirement and reconsideration to include a more reasonable number of at least 10 sequences in accordance

with MPEP § 803.04 is also respectfully requested.

However, in an earnest effort to advance the prosecution of this case, Applicants elect Group I, claims 1-5, 7-9 and 15, SEQ ID NO:81 encoding SEQ ID NO:221, with traverse.

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

Kathleen A. Tyrrell
Reg. No. 38,350

Date: **October 21, 2003**

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